IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of case

WPMS 3 of 2002, decided on 17.X.2003

Nitin Shankar Vs. DJ Nainital and ors.

A.F.R. (Approved for reporting)
Not approved for reporting

Date 17-X-03

Initials of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 3 (M/S) of 2002

(1) Nitin Shanker
(2) Sunil Shanker
Sons of late Sri Ravi Shanker,
R/o Laxmi Niwas, Spring Cottage
Compound, Mallital, Nainital .....Petitioners

Versus

(1) District Judge, Nainital,
(2) Prescribed Authority (Rent Control)
/VI Fast Track Court, Nainital,
(3) Rajkesh Mehrotra S/o Sri Devi
Shanker Mehrotra, R/o Hotel
Broadway, Mallital, Nainital .....Respondents.

.....

Coram: Hon. P.C. Verma, J.

Dated: October 17, 2003

[Per Hon. P.C. Verma J.]

This petition has been filed by the petitioners seeking writ of certiorari to quash the order dated 19.12.2001 passed by respondent No.1 in Rent Control Appeal No. 1 of 2001 dismissing the appeal of opposite parties/tenants / petitioners against the judgment and order dated 06.08.2001 passed by respondent No.2- Prescribed Authority, by which the application under Section 21 (1) (a) of U.P. Act No. XIII of 1972 of the applicant/landlord /respondent No.3 was allowed.

The facts of the case, briefly stated, are as under:

That an application was moved by the applicant-respondent No.3 under Section 21(1)(a) of U.P. Act No. XIII of 1972 before the Prescribed Authority with the allegations that he is the landlord of the building known as 'Laxmi Niwas'

situated at Mallital, Nainital. The said property came in the share of the applicant-respondent through oral family partition regarding which a memorandum was prepared on 20.12.1998. Originally Sri Ravi Shanker, father of the opposite parties/appellants/petitioners, was tenant in the house and after his death his sons Nitin Shanker and Sunil Shanker (petitioners) became the tenants in common on a rent of Rs. 560/- per month. The house was owned by Sri Devi Shanker Mehrotra, father of the applicant-respondent No.3 before the family settlement. After the respondent No.3-applicant became owner/landlord of the house in question he sent a notice dated 23.7.1999 by registered post to the opposite parties-appellants-petitioners about the change of landlordship. In reply to said notice the appellants/tenants through their counsel sent the rent due, vide a bank draft on 09.08.1999. Since the tenants /petitioners demanded copy of the family settlement, a copy of the same was sent to them through their Advocate. The house 'Laxmi Niwas' consists of six rooms (four big rooms and two small rooms) apart from two bathrooms, two toilets and one kitchen. The applicant/respondent No.3 is staying with his family in Hotel Broad Way and in a very uncomfortable condition as said hotel belongs to his brother Sri Mukesh Mehrotra and, as such, the landlord is living at the mercy of his brother which has become a cause of tension in the family. Staying in the hotel has also been adverse for the studies of the children of the respondent No.3/landlord. As against this the tenants/petitioners are not staying in the house in question, rather they prefer to live in their Farm and in Delhi. In these circumstances a prayer has been made for the release of the house as the same is needed bonafide by the landlord.

The petitioners/opposite parties (tenants) contested the release application and filed a joint written statement, denying the allegations of the release application. They have stated that Sri Devi Shanker Mehrotra, father of

the applicant (respondent No.3 in the petition) is the landlord and the alleged family settlement is a sham. The family settlement is also challenged on the ground that even after family settlement Sri Devi Shanker Mehrotra still represents himself as landlord. The document dated 20.12.1998 is alleged not to be a genuine document. As such, the respondent No.3-applicant is not the landlord of the house in question. He is residing comfortably in the third floor of Hotel Broad Ways. It is also alleged in the written statement that the partition-deed in question is not admissible in evidence for want of compliance of Section 17 of the Indian Registration Act. By amendment it is also added in the written statement that after the alleged family settlement dated 20.12.1998 Sri Devi Shanker Mehrotra has alleged himself to be the landlord of building Laxmi Niwas before Commissioner Kumaon, Division in some other proceedings. It was also alleged in the written statement that the need of the respondent No.3-applicant is not bonafide.

The Prescribed Authority, after considering the documentary evidence filed by the parties and after hearing the parties allowed the release application under Section 21(1) (a) of U.P.Act No. XIII of 1972. Against the said order, the opposite parties filed the appeal before the Appellate Court. The same was dismissed by the Appellate Authority holding that the need of the landlord appears to be bonafide and genuine. The Appellate Court further held that the comparative hardship is also in favour of the landlord because the opposite parties (petitioners) do not stay at Nainital in the disputed building throughout the year. They themselves have stated in their counter-affidavit that they often come in the house in question to look after their children who are studying in public schools in Nainital. It is also not the case of the tenants-appellants that their children are living in the house in question.

The petitioners / appellants aggrieved by the orders passed by the Prescribed Authority as well as the Appellate Court filed the present writ petition challenging the impugned orders on the ground that the respondent No.3 is not the owner and landlord of the building in question as such his release application under Section 21(1)(a) of U.P. Act No. XIII of 1972 was not maintainable in view of the fact that the alleged family settlement/partition deed dated 20.12.1998 is not admissible in evidence as it was neither registered nor properly stamped. The alleged family settlement/partition deed dated 20.12.1998 is nothing but sham and the same has been prepared to defraud the petitioners as well as the rent control authorities constituted under U.P.Act No. 13 of 1972. Devi Shanker Mahrotra himself applied for release on 13.5.1999 much after the alleged family settlement/partition for the release of the building in question claiming himself to be the owner and landlord which proves that the alleged family settlement/partition is nothing but a manipulation between respondent No. 3, his father, brothers and sisters to defraud the petitioners and the rent control authorities.

The respondent No.3 filed his counter affidavit denying the allegations made by in the writ petition. In Para-5 it is stated that the rent of Rs. 6720.00 sent by the petitioner (tenant) No.1 to Sri Devi Shanker Mehrotra with letter dated 09.07.1999 was returned informing the petitioner No.1 that Devi Shanker Mehrotra was no more landlord of Laxmi Niwas, as by way of family settlement dated 20.12.1998 the respondent No.3 had become landlord of Laxmi Niwas. It is also stated that the application dated 13.05.1999 was given by the father of the deponent to the Commissioner in anxiety to get the building released in favour of the deponent. Being 90 years old he forgot to mention in the petition that the building has been given to the deponent by way of family settlement. The family

settlement dated 20.12.1998 cannot be challenged by the tenants. It is also denied in the counter affidavit that father of the deponent is still owner and landlord of the building. After family settlement dated 20.12.1998 the deponent alone is owner/landlord of Laxmi Niwas. His need for accommodation is genuine which has been fully considered and found genuine by the courts below.

On behalf of the petitioners, the petitioner No.1 Nitin Shanker filed his rejoinder affidavit rebutting the contentions of the respondent No.3 made in the counter affidavit.

The respondent No.3 filed his supplementary counter affidavit in which he has deposed that oral family settlement took place between the father of the deponent and his legal heirs to which the deponent was also a party. That the above oral family settlement was immediately acted upon and all the parties came into possession of their respective shares and thereafter the oral family settlement was given written shape on 20.12.1998 by means of a memorandum of family settlement.

I have heard learned counsel for the parties and have gone through the record of the case.

From the above facts, it is clear that the trial Court as well as appellate Court after construing the documents held that the family settlement was memorandum of settlement and it was not required to be registered. It was also held that the issue of admissibility of memorandum of family settlement is not of much relevance in this case for the reason that when the memorandum was signed by the parties on 20.12.1998 and thereafter in July 1999, copy of notice (paper no. 6C) was given to the appellants-tenants regarding the fact that instead of Devi Shanker Mehrotra now the rent is payable to Rakesh Mehrotra. In response to the said notice petitioner/appellant-Nitin Shankar sent reply dated 09.08.1999 alongwith the bank draft for payment of rent for

the year 1999. Therefore, the petitioner has accepted the respondent as landlord after the aforesaid family settlement and paid rent for one year.

When the Respondent no. 3/applicant Rakesh Mehrotra moved an application for release of the premises under section 21(1)(a) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction Act), 1972 (U.P. Act No. XIII of 1972) on the ground that the applicant requires the building bonafide for his personal use and the use of the members of his family, the petitioners/opposite parties took plea that the respondent no.3/applicant does not require the building for his personal use, but with intention to evict the petitioners. Learned Prescribed Authority(Civil Judge, Senior Division), Nainital recorded the finding that the need of the applicant was bonafide. He was landlord in view of the family settlement and allowed the application. aggrieved by the same, opposite parties went in appeal, which was dismissed by the learned District Judge, Nainital. Hence, the present writ petition.

Mrs. Tahmina Punwani, learned counsel for the petitioners assailed the orders of the learned Prescribed Authority as well as Appellate Court. Learned counsel submitted that the petitioners are tenants of the building known as Laxmi Niwas, Spring Cottage Compund, Mallital, Nainital. This building was taken on rent by the father of the petitioners from one Devi Shanker Mehrotra, the father of the respondent n.3, about 50 years back and after the death of the father of the petitioners, the petitioners became tenants of the building in question. The petitioners are residing in the said building since their birth and they have become tenants thereof, after the death of their father. Presently, they are residing in the premises in question with their respective family members. Till 1998, the rent of the building in question was being taken by Sri Devi Shankar Mehrotra. Daughter of petitioner no.1 met with a serious accident in the

month of July, 1999 as such, he was compelled to rush to Delhi for her treatment and he had to stay there for a considerably long period in connection with her treatment. In these circumstances, the petitioner no.1 sent the rent amounting to Rs. 6720/- pertaining for the period of year 1998 with a covering letter dated 9.7.1999. Shri Devi Shanker Mehrotra, landlord of the building, filed earlier several applications and proceedings under section 12 and 16 of the U.P.Act No. XIII of 1972 for declaring the building in question as vacant and releasing the same on fake grounds but he could not succeed in his wrongful designs. Further it is submitted that partition of immovable property by way of a partition deed which is neither properly stamped nor registered is not admissible in evidence and the same is hit by section 35 of the Indian Stamp Act and section 17 and 49 of the Registration Act. Thus, by virtue of the said partition deed no right, ownership or landlordships could be claimed by the respondent no.3 in the building in question. The father of the respondent no.3, Devi Shankar Mehrotra has vast properties in Nainital town and he has small family of himself and his two sons Rakesh Mehrotra and Mukesh Mehrotra and their families. The need of respondent no.3 is not genuine and bonafide. The learned Prescribed Authority-respondent no.2 after hearing both the parties allowed the release application of the respondent no.3. The judgment of the learned trial Court is illegal, erroneous and bad in law. Lastly, it is submitted that the learned Appellate Court did not consider the evidence produced by the petitioners. The appellate Court while assuming that the alleged family settlement/partition deed is not admissible in evidence still made the same basis of right claimed by the respondent no.3. Thus, the Appellate Court has committed manifest error of law. Learned counsel for the petitioners submitted that the impugned orders of the learned Courts below is liable to be quashed. The document, which is alleged to be partition

deed, being unregistered was inadmissible in evidence and does not confer any right on the respondent no.3 to become the landlord.

Memorandum of family settlement is reproduced as below:

> "We, Shri Devi Shankar Mehrotra, aged adult, son of late Laxmi Chandra Mehrotra r/o 47/48 Bara Bazar, Mallital, Nainital- the First party to this memorandum of oral family settlement and Shri Rakesh Mehrotra, Mukesh Mehrotra, Smt. Suman Kapoor w/o Shri Shashi Kapoor daughter of Shri Devi Shankar Mehrotra and Smt. Manju Kapoor wife of Nirankar Nath Kapoor daughter of Shri Devi Shankar Mehrotra- the Second party to this memorandum of oral family settlement, mutually agree to execute this memorandum of oral family settlement on this date of 20.12.1998 in the following manner:
>
> 1. That the first party has several self-acquired movable and immovable property and to maintain peace and harmony in the family which is joint Hindu family and to maintain love and affection between the family, partition took place by way of oral family settlement which is being executed in written form today.
> 2. That the first party and Mukesh Mehrotra will be the absolute owner of the property 47/48 Bara Bazar, Mallital, Nainital, and this property will remain jointly in the share of these two persons and the shop 'Laxmi Chand and sons' situated in this property of which the first party is the sole proprietor, shall also be in the share of the first party and Mukesh Kumar Mehrotra.
> 3. The Laxmi Niwas and Annexe will be in the name and share of Shri Rakesh Mehrotra and Rakesh Mehrotra will be the sole owner of Laxmi Niwas and Annexe and now onwards only he will collect the rent from its tenants Shri Sunil Shankar and Nitin Shankar and Rakesh Mehrotra will be the sole landlord and owner of Laxmi Niwas.
> 4. That Newvilla in which the hotel Broad-way is being run and which is being run by Mukesh Mehrotra and in future the sons of Shri Mukesh Mehrotra and Rakesh Mehrotra will be the owner of this hotel.
> 5. That Shri Rakesh Mehrotra and Mukesh Mehrotra will have equal share in Rama Cottage, Mallital, Nainital and they will collect the rent from the tenants of this property of their respective shares and they will be the landlord and owner of this property from today.

6. That Shri Rakesh Mehrotra and Mukesh Mehrotra will be the owner of equal shares of the property situated at Kathgodam and they will bear the litigation expenses.
7. That the land below the road to Spring Cottage which is in the name of the first party will now be in the ownership of Shri Mukesh Mehrotra.
8. That the sale proceeds of the two-two flats respectively of Rakesh Kuteer (Usha Sadan) will be given to Smt. Suman Kapoor and Smt. Manju Kapoor.
9. That the above property will be mutated by both the parties in the municipal records as per the above family settlement to which no party shall have any objection.
10. That the memorandum of oral family settlement has been signed by all the parties in presence of the witnesses without any fraud, undue influence, fear and after reading and understanding its contents so that it may be used as and when necessary.

Executed at Nainital on 20.12.1998.

Parties: First party (Sd/-)
Second parties(Sd/-)
20.12.1998"

A perusal of the aforesaid document shows that it is a memorandum of oral settlement recognizing the share in the property described in the share of each of the family member in order to keep the future peace amongst the family members and to avoid unnecessary family dispute.

The Apex Court in the case of S. Sai Reddy Vs. S.Narayana Reddy and others (1991) 3 S.C.C. 647, held as under:

> "A partition of the joint Hindu family can be effected by various modes, viz. by a family settlement, by a registered instrument of partition, by oral arrangement by the parties, or by a decree of the Court."

Hon'ble Supreme Court in the case of M.N.Aryamurthi and another Vs. M.L.Subbaraya Setty (dead) by his legal representatives and others reported in A.I.R.1972 Supreme Court 1279 considering the nature of memorandum of settlement has held as under:

> " A family arrangement is an agreement between the members of the same family intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour……..
>
> "It will be, therefore, seen that in the first place, there must be an agreement amongst the various members of the family intended to be generally and reasonably for the benefit of the family. Secondly, the agreement should be with the object either of compromising doubtful or disputed rights or for preserving the family property or the peace and security of the family by avoiding litigation, or for saving its honour. Thirdly, being an agreement, there is consideration for the same, the consideration being the expectation that such an agreement or settlement will result in establishing or ensuring amity and good-will amongst the relations…….
> The question, therefore, is whether the father and sons in this case had been really motivated by the above objects, when the father purported to make the will which would then be a misnomer for an agreement embodying a family arrangement."

Hon'ble Supreme Court in the case of Kale and others Vs. Deputy Director of Consolidation and others reported in (1976) 3 Supreme Court Cases 119 observed as under:

> "A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of few is undoubtedly a milestone in the administration of social justice. That is why the term 'family' has to be understood in a winder sense so as to include within its fold not only close relations of legal heirs but even those persons who may have some sort of antecedent title, a semblance of a claim or even if they have a spes succession so that future disputes are sealed for ever and the family instead of fighting claims inter se and

wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive work in the larger interest of the country.....

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term 'family arrangement is applied.....

It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between the document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and, therefore, is not compulsorily registrable;

The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property, which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claim or title in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same.'

In the above case ((1976) 3 Supreme Court Cases 119), the Apex Court relief on its observations in the case of Tek Bahadur Bhujil Vs. Debi Singh Bhujil (AIR 1966 SC 292 as under:

"Family arrangement as such can be arrived at orally. Its terms may be recorded in writing as a memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared

as a record of what had been agreed upon so that there be no hazy notions about it in future."

Again in the above case ((1976) 3 Supreme Court Cases 119), it was observed as under:

"Similarly Patna High Court in the case of Awadh Narain Singh Vs. Narain Mishra (AIR 1962 Patna 400) pointed out that a compromise petition not embodying any terms of agreement but merely conveying information to the Court that family arrangement had already been arrived at between the parties did not require registration and can be looked into for ascertaining the terms of family arrangement."……

"Form the principles enunciated by us and the case law discussed above, it is absolutely clear that the word 'family' cannot be construed in a narrow sense so as to confine the parties to the family arrangement only to persons who have a legal title to the property. Even so it cannot be disputed that the appellant Kale being the grandson Lachhman and therefore a reversioner at the time when the talks for compromise took place was undoubtedly a prospective heir and also a member of the family…….

Another argument advanced by Counsel for the respondents was that the family arrangement was not valid because the appellant had absolutely no title to the property so long as Mst. Ram Pyari was in lawful possession of the property as the sole heir to Lachman, and if under the family arrangement any title was conveyed to the appellant, the said conveyance can only be by a registered instrument under the provisions of the Registration Act and the Transfer of Property Act. This argument also, in our opinion, suffers from a serious misconception. We have already pointed out that this Court has widened the concept of an antecedent title by holding that an antecedent title would be assumed in a person who may not have any title but who has been allotted a particular property by other party to the family arrangement by relinquishing his claim in favour of such a donee. In such a case the party in whose favour the relinquishment is made would be assumed to have an antecedent

> title. In fact the similar argument was advanced before this Court in Tek Bahadur Bhujil's case (Supra) relying on certain observations made by Bose,J. In Sahu Madho Das's case (Supra) but the argument was repelled and the Court observed as follows:
>
> Reliance is placed on the following in support of the contention that the brothers, having no right in the property purchased by the mother's money, could not have legally entered into a family arrangements. The observations are;
>
> It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognizing the right of the others, as they had previously asserted it to the portions allotted to them respectively.
>
> These observations do not mean that some title must exist as a fact in the persons entering into a family arrangement. They simply mean that it is to be that the agreement clinches and defines what that title is…….
>
> Assuming that the grandson had no legal title, so long as the daughters were there, still as the settlement was made to end the disputes and to benefit all the near relations of the family, it would be sustained as a valid and binding family settlement."

The Apex Court again considered the nature of document of memorandum of settlement in the case of Roshan Singh and others Vs. Zile Singh and others reported in AIR 1988 SC 881 observed as under:

> "A writing which merely recites that there has in time past been a partition, is not a declaration of will, but a mere statement of fact and it does not require registration. The essence of the matter is whether the deed is a part of partition transaction or contains merely an incidental recital of a previously completed transaction. The use of the past tense does not necessarily indicate that it is merely a recital of a past transaction. It is equally well settled that a mere list of properties allotted at a partition is not an instrument of partition and does not require registration. Section 17(1)(b) lays down

that a document for which registration is compulsory should, by its own force, operate and purport to operate to create or declare some right in immovable property. Therefore, a mere recital of what has already taken place cannot be held to declare any right and there would be no necessity of registering such a document.……

Partition lists which are mere records of a previously completed partition between the parties, will be admitted in evidence even tough they are unregistered to prove the fact of partition.……

Partition, unlike the sale or transfer which consists in its essence of a single act, is a continuing state of facts. It does not require any formality, and therefore, if parties actually divide their estate and agree to hold in severalty, there is an end of the matter.……

What follows in Exh. P-12 is a mere list of properties allotted at a partition and it cannot be construed to be an instrument of partition and therefore did not require registration under S. 17(1)(b) of the Act. That apart, the document could always be looked into for the collateral purposes of proving the nature and character of possession of each item of property allotted to the members.……

If, on the other hand, the parties set up competing titles and the differences are resolved by the compromise, there is no question of one deriving title from the other and, therefore, the arrangement does not fall within the mischief of Section 17 read with S. 49 of the Registration Act as no interest in property is created or declared by the document for the first time. As pointed out by this Court in Sahu Madho Das's case, it is assumed that the title had always resided in him or her so far as the property falling to his or her share is concerned and, therefore, no conveyance is necessary.……

It is well settled that the document though unregistered can however be looked into for the limited purpose of establishing a severance in status, tough that severance would ultimately affect the nature of the possession held by the members of the separated family as co-tenants."

Ratio of the aforesaid judgments applies in full force in view of the nature of the document above. Therefore

this document was not required to be registered. The learned trial Court as well as the learned Appellant Court have rightly relied upon this memorandum of settlement and held the respondent no.3 as landlord.

Yet there is another strong reason to hold the respondent No.3 to be landlord in view of the definition of the landlord given under U.P.Act No.XIII of 1972 (hereinafter referred to the Act) and authorization in the family settlement for collection of rent from the tenant of accommodation in question.

The 'landlord' has been defined in Section 3 (j) of the Act, which is reproduced as under:-

"3 (j) 'landlord', in relation to a building, means a person to whom its rent is or if the building were let, would be, payable and includes, except in Clause (g), the agent or attorney or such person;"

The 'family' has been defined in Section 3 (g) of the Act, which is reproduced as under:-

"3(g) 'family', in relation to a landlord or tenant of a building, means, his or her-

(i) spouse,
(ii) male lineal descendants,
(iii) such parents, grand-parents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her,

and includes, in relation to a landlord, any female having a legal right or residence in that building;"

In the definition of landlord the words "means and includes" have been used which make the definition inclusive is obvious from the reading of definition itself. According to the definition, the word 'landlord' means a person to whom its rent is or would be payable and includes the agent or attorney or such person. By virtue of this definition landlord owner can authorize any member of his family to collect rent

and can authorize any other person who is not a family member to collect the rent. Thus, this definition of landlord includes three types of landlords.

(i) landlord who is the owner of the accommodation;

(ii) landlord who has been authorized by owner to collect the rent of the accommodation and is a family member.

(iii) Landlord who is authorized to collect the rent i.e. the agent or the attorney or such person, but is not a family member of owner.

The agent or attorney or the person authorized to collect the rent who is not a family member will not be landlord used in the definition of 'family' defined in Clause (g) of Section 3 of the Act.

Sub-section (1) of Section 21 and Clause (a) of sub-section (1) of Sec. 21 of the Act reads as under:-

"21. Proceedings for release of building under occupation of tenant.-(1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely,-

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust for the objects of the trust;"

A conjoint reading of Clause (a) of sub-section (1) of Section 21 with definition of landlord contained in Clause (j) and definition of family contained in Clause (g) of Section 3 of the Act makes it abundantly clear that the land-lord, who is owner of the building can maintain the petition under section 21 of the Act. Land-lord authorized by the owner of the building to collect the rent and who is the family member of the owner, can also maintain the petition but the land-lord, who is authorized to collect the rent i.e. the Agent or Attorney

or any such other person, who is not a family member of the owner, cannot maintain the petition under section 21 of the Act. The respondent no.3, being family member within the definition of the family in clause (g) of Section 3 of the Act is duly authorized by owner to collect the rent by the family settlement and is land-lord for the purpose of the Act and can maintain the application under section 21 (1) (a) of the Act on the ground that the building is bonafide required for his personal need or for any member of his family. Family arrangement made, by which the accommodation fell into the share of respondent no.3 and by which the respondent no.3 was duly authorized by his father, the owner of the building, to collect the rent, was duly communicated to the petitioner and the petitioner admitted the respondent no.3 as his land-lord and paid him rent.

By means of the family settlement dated 20.12.1998 the father of the respondent No.3 has authorized him to collect the rent of the accommodation in question. The information to this effect was given to the petitioners and petitioner have accepted the respondent No.3 as landlord and petitioner no.1 has paid the rent of accommodation in question by Bank Draft No. 512939 00000, 2000 dated 02.08.1999 amounting to Rs. 6,720/-. Therefore, now it is not open for the petitioners to contend that the respondent No.3 is not landlord of the accommodation in question.

A perusal of the documents shows that the respondent no.3 has been authorized to collect the rent. The above analysis makes the respondent no.3 the landlord in view of section 21 of the U.P. Act No. XIII of 1972.

Learned counsel for the petitioner has relied upon the case K. D. Dewal Vs. Harbhajnan S. Parihar reported in (2002)1 S.C.C. 199. The said judgment is not attracted to the facts and circumstances of the case.

On the comparative hardship, a clear cut finding has been recorded by the Courts below that the petitioners

use the premises only when they visit to Nainital during long interval of time, while the respondent no.3 is in need of the accommodation in question for their personal use bonafide.

For the reasons recorded above, writ petition lacks merit and is hereby dismissed.

No order as to costs.

(P.C. Verma, J.)

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